Dato' Dr Abd Isa bin Ismail v Dato' Abu Hasan bin Sarif & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02()–7–03 OF 2012(W)
ZULKEFLI CJ (MALAYA), HASHIM YUSOFF, AHMAD MAAROP, ZALEHA ZAHARI AND ZAINUN ALI FCJJ
21 JANUARY 2013

Administrative Law — Remedies — Certiorari and mandamus — Judicial review — Whether State Seat vacant — Whether absence constituted breach of art 51 of Laws of the Constitution of Kedah — Whether royal proclamation an interruption in succession of the two meetings — Laws of the Constitution of Kedah arts 51 & 53

Statutory Interpretation — Construction of statutes — Rules of construction — Whether trial judge erred in according plain and ordinary meaning to phrase 'two consecutive meetings' in art 51 — Exercise of powers by Sultan of Kedah ('HRH') — Obligation of HRH to prorogue or dissolve assembly

The appellant ('the applicant'), the Speaker of the Kedah State Legislative Assembly, appealed against the decision of the Court of Appeal which had reversed the decision of the High Court in allowing his application for judicial review against the first and second respondents, the State Assemblyman for the Kota Siputeh and the Election Commission of Malaysia ('EC'), respectively. In the High Court, the applicant applied for judicial review seeking: (i) a writ of *quo warranto* to ask the first respondent to show cause and give confirmation of how and under what basis/or authority that the first respondent was still the State Assemblyman for Kota Siputeh; (ii) a declaration that the first respondent was no longer the Kota Siputeh Assemblyman; (iii) a declaration that the Legislative Assembly of the State of Kedah for the constituency of Kota Siputeh was vacant; and (iv) a mandatory injunction preventing the first respondent and/or his agents from carrying out the responsibilities, functions and duties as Kota Siputeh Assemblyman. Against the second respondent, the applicant sought an certiorari order to quash the second respondent's decision and/or action that: the Kota Siputeh State Seat was not vacant; the first respondent was still the Kota Siputeh Assemblyman; and no by-Election would be held by reasons aforementioned; and an order of mandamus to compel the second respondent to issue a writ of election and to hold a by-election to the Kota Siputeh State Seat. Before the High Court, the principal issue for determination revolved around whether the Kota Siputeh State Seat had, by operation of law, under art 51 of the Kedah Constitution, become vacant as the first respondent was absent for two consecutive meetings of the Legislative

Assembly without the leave of the Speaker. The High Court held that the applicant was correct in his interpretation of art 51 of the Kedah Constitution and that the first respondent's seat had become vacant by the operation of law. The court further held that the second respondent was wrong in deciding that the seat was not vacant and the High Court quashed the second respondent's decision. This decision was reversed by the Court of Appeal as it was held that the meeting on 19 April 2009, being the fifth meeting of the first session and the meeting on 9 August 2009, being the first meeting of the second session, were not 'two consecutive meetings' as envisaged by art 51 of the Kedah Constitution. The first respondent's seat was held not to be vacant. In the present appeal by the applicant, the issue for the court's consideration was whether on the true interpretation of art 51 of the Laws of the Constitution of Kedah, the absenteeism requirement, in order to render a seat vacant ('two consecutive meetings'), referred to two consecutive meetings in one 'session' or to two consecutive meetings simpliciter. The applicant submitted that the words of art 51 of the Kedah Constitution were clear, plain and unambiguous, and ordinary meaning irrespective of its consequences ought to be given to it. It was further submitted that it was not open to the court to import the phrase 'two consecutive meetings in a session' when none was intended at the outset by the Legislature. No words should be added to art 51 of the Kedah Constitution when and where they were not intended. The applicant next submitted that following the interpretation provision of art 2 of the Kedah Constitution, a 'session' would continue until it was dissolved or prorogued but there was no prorogation or dissolution of the Legislative Assembly after the meeting held on 19 April 2009, which was the fifth meeting of the first session. In any event, the applicant submitted, it was irrelevant whether both the meetings were in the same session or otherwise because the first respondent missed both of the said meetings which were held consecutively.

Held, dismissing the appeal and affirming decision of the Court of Appeal:

(1) (per **Zulkefli CJ (Malaya)**) From the meaning assigned to the word 'meeting', it was clear that meetings were sittings of the Legislative Assembly that were held in a session. The meaning of session showed that each session had a time frame from when the assembly first met after being constituted or after its prorogation or dissolution until it was terminated. Each session had its own set of meetings in an uninterrupted succession. When the meaning of 'meeting' as defined in art 2(1) was applied to art 51 of the Kedah Constitution, it was abundantly clear that the last sitting in one session would be the assembly's last meeting of that session, and the first sitting of the next session was the assembly's first meeting of the new session. Thus, the coming into existence of a new session meant that the last meeting of the preceding session and the first meeting in the new session no longer followed continuously. Therefore

the last meeting of the preceding session and the first meeting of the new session was not accordingly consecutive (see paras 15–16).

(2) (per **Zulkefli CJ (Malaya)**) The EC had rightly interpreted and gives effect to the proclamation in arriving at its decision. Learned counsel for the second respondent was right in submitting that the EC was not at liberty to question the proclamation or question its validity. The proclamation by His Royal Highness ('HRH') had taken effect and had not at all material times been revoked. All documentation, even that of the Speaker himself, showed that the meeting on 9 August 2009 was the first meeting of the second session. This could be seen in the letter dated 17 August 2009 where the Speaker informed the first respondent of the seat becoming vacant due to the first respondent's absence (see para 18).

(3) (per **Zulkefli CJ (Malaya)**) From the clear wordings of art 53(1) of the Kedah Constitution, no one except HRH can summon the Legislative Assembly to meet. This power is exercised on the advice of the Executive Council. For the Kedah State Legislative Assembly, the practice is to summon the first meeting of a new session without the preceding session being expressly prorogued. There is no provision that requires the preceding session to be prorogued before a new session can come into existence. In such circumstances, in the absence of express provision to the contrary, there was no impediment for HRH to commence a new session without first having the preceding session prorogued (see paras 20–21).

(4) (per **Zainun Ali FCJ, dissenting**) An adjournment, as was the case of the fifth meeting, did not have the same effect on parliamentary proceedings as did a prorogation. Furthermore, it was an unsustainable proposition that a prorogation could be inferred, implied or deemed (see paras 91–92).

(5) (per **Zainun Ali FCJ, dissenting**) The phrase 'two consecutive meetings' in art 51 should be given its plain and ordinary meaning nothing more and nothing less, ie two consecutive meetings, in uninterrupted succession in one or more session as happened in this appeal, for as long as the meetings were in succession and the business of the assembly continued as usual, since it was never prorogued. The clear, plain and unambiguous language of art 51 calls for a literal interpretation (see para 108).

[Bahasa Malaysia summary

Perayu ('pemohon'), Speaker Dewan Undangan Negeri Kedah, telah merayu terhadap keputusan Mahkamah Rayuan yang telah mengakas keputusan Mahkamah Tinggi dengan membenarkan permohonannya untuk semakan kehakiman terhadap responden-responden pertama dan kedua, Ahli Dewan Undangan Negeri Kota Siputeh dan Suruhanjaya Pilihan Raya Malaysia

('SPR'), masing-masingnya. Di Mahkamah Tinggi, pemohon telah memohon semakan kehakiman memohon: (i) writ *quo warranto* untuk meminta responden pertama tunjuk sebab dan memberikan pengesahan bagaimana dan atas dasar/atau kuasa mana yang responden pertama masih Ahli Dewan Undangan Kota Siputeh; (ii) deklarasi bahawa responden pertama bukan lagi Ahli Dewan Undangan Kota Siputeh; (iii) deklarasi bahawa Dewan Undangan Negeri Kedah bagi kawasan pilihan raya Kota Siputeh adalah kosong; dan (iv) injunksi mandatori menghalang responden pertama dan/atau ejennya daripada menjalankan tanggungjawab, fungsi dan tugas sebagai Ahli Dewan Undangan Kota Siputeh. Terhadap responden kedua, pemohon memohon perintah certiorari untuk membatalkan keputusan dan/atau tindakan responden kedua bahawa: Kerusi Negeri Kota Siputeh tidak dikosongkan; responden pertama masih Ahli Dewan Undangan Kota Siputeh; dan tiada Pilihan Raya Kecil akan diadakan atas sebab yang dinyatakan; dan perintah mandamus untuk memaksa responden kedua mengeluarkan writ pilihan raya dan mengadakan Pilihan Raya Kecil untuk Kerusi Negeri Kota Siputeh. Di hadapan Mahkamah Tinggi, isu utama untuk ditentukan berkisarkan sama ada Kerusi Negeri Kota Siputeh telah, melalui operasi undang-undang, di bawah perkara 51 Perlembagaan Kedah, telah menjadi kosong kerana responden pertama tidak hadir untuk dua mesyuarat Dewan Undangan secara berturut-turut tanpa kebenaran Speaker. Mahkamah Tinggi memutuskan bahawa pemohon adalah betul dalam tafsirannya tentang perkara 51 Perlembagaan Kedah dan bahawa kerusi responden pertama telah menjadi kosong melalui operasi undang-undang. Mahkamah selanjutnya memutuskan bahawa responden kedua adalah salah kerana memutuskan bahawa kerusi itu tidak kosong dan Mahkamah Tinggi telah membatalkan keputusan responden kedua. Keputusan ini telah diakaskan oleh Mahkamah Rayuan kerana telah memutuskan bahawa mesyuarat pada 19 April 2009, iaitu mesyuarat kelima untuk sesi pertama dan mesyuarat pada 9 Ogos 2009, yang merupakan mesyuarat pertama untuk sesi kedua, bukan 'dua mesyuarat berturut-turut' sebagaimana termaktub dalam perkara 51 Perlembagaan Kedah. Kerusi responden pertama telah diadakan tidak kosong. Dalam rayuan ini oleh pemohon, isu untuk dipertimbangkan oleh mahkamah adalah sama ada penafsiran sebenar perkara 51 Perlembagaan Kedah, ketiadaan keperluan, bagi tujuan mengakibatkan kerusi kosong ('dua mesyuarat berturut-turut'), merujuk kepada dua mesyuarat berturut-turut dalam satu 'sesi' atau simpliciter dua mesyuarat berturut-turut. Pemohon berhujah bahawa perkataan-perkataan perkara 51 Perlembagaan Kedah adalah jelas, nyata dan tak taksa, dan maksud biasa tidak kira akibatnya yang patut diberikan kepadanya. Selanjutnya adalah dihujahkan bahawa ia tidak terbuka kepada mahkamah untuk mengimport istilah 'dua mesyuarat berturut-turut dalam satu sesi' apabila tidak diniatkan pada awal lagi oleh badan perundangan. Tiada perkataan patut ditambah kepada perkara 51 Perlembagaan Kedah bila dan di mana tidak diniatkan begitu. Pemohon seterusnya berhujah bahawa berikutan peruntukan tafsiran perkara 2 Perlembagaan Kedah, 'sesi' akan bersambung

sehingga ia dibubarkan atau ditangguhkan tetapi tiada penangguhan atau pembubaran Dewan Undangan selepas mesyuarat yang diadakan pada 19 April 2009, iaitu mesyuarat kelima untuk sesi pertama. Walau bagaimanapun, pemohon berhujah, adalah tidak relevan sama ada kedua-dua mesyuarat dalam satu sesi atau sebaliknya kerana responden pertama tidak hadir untuk kedua-dua mesyuarat tersebut yang telah diadakan secara berturut-turut.

Diputuskan, menolak rayuan dan mengesahkan keputusan Mahkamah Rayuan:

(1) (oleh **Zulkefli Hakim Besar (Malaya)**) Berdasarkan maksud yang diberikan untuk perkataan 'mesyuarat', adalah jelas mesyuarat adalah persidangan Dewan Undangan yang bersidang dalam sesuatu sesi. Maksud sesi menunjukkan bahawa setiap sesi mempunyai tempoh masa dari kali pertama dewan perhimpunan bersidang selepas ia ditubuhkan atau selepas ditangguhkan atau dibubarkan sehingga ia ditamatkan. Setiap sesi mempunyai set mesyuaratnya sendiri dalam turutan berterusan. Apabila maksud 'mesyuarat' seperti yang ditafsirkan dalam perkara 2(1) terpakai kepada perkara 51 Perlembagaan Kedah, adalah jelas bahawa persidangan terakhir dalam satu sesi merupakan mesyuarat terakhir Dewan Undangan untuk sesi tersebut, dan persidangan pertama sesi berikutnya merupakan mesyuarat pertama Dewan Undangan untuk sesi baru itu. Oleh itu, kewujudan sesi baru yang akan datang bermaksud bahawa mesyuarat terakhir sesi sebelumnya dan mesyuarat pertama dalam sesi baru tidak lagi mengikut berterusan. Oleh itu mesyuarat terakhir sesi sebelumnya dan mesyuarat pertama sesi baru tidak sewajarnya berturut-turut (lihat perenggan 15–16).

(2) (oleh **Zulkefli Hakim Besar (Malaya)**) Pihak SPR betul dalam mentafsirkan dan memberikan kesan kepada pengisytiharan semasa membuat keputusannya. Peguam bijaksana bagi pihak responden kedua adalah betul dengan berhujah bahawa SPR tiada kebebasan untuk mempersoalkan pengisytiharan itu atau mempersoalkan kesahannya. Pengisytiharan Yang di-Pertuan Agong ('YDPA') telah berkuat kuasa dan tidak langsung pada masa matan telah dibatalkan. Semua dokumentar, yang mana juga berhubung Speaker itu sendiri, menunjukkan bahawa mesyuarat pada 9 Ogos 2009 merupakan mesyuarat pertama sesi kedua. Ini dapat dilihat dalam surat bertarikh 17 Ogos 2009 di mana Speaker itu telah memberitahu responden pertama mengenai kerusi yang akan dikosongkan akibat ketidakhadiran responden pertama (lihat perenggan 18).

(3) (oleh **Zulkefli Hakim Besar (Malaya)**) Berdasarkan perkaaan-perkataan nyata perkara 53(1) Perlembagaan Kedah, tiada siapa kecuali YDPA boleh memanggil Dewan Undangan untuk bersidang. Kuasa ini

dilaksanakan atas nasihat Majlis Eksekutif. Untuk Dewan Undangan Negeri Kedah, amalannya adalah untuk memanggil mesyuarat pertama untuk sesi baru tanpa sesi sebelumnya ditangguh dengan nyata. Tiada peruntukan yang mengkehendaki sesi sebelumnya ditangguhkan sebelum sesi baru boleh diwujudkan. Dalam keadaan sedemikian, dengan ketiadaan peruntukan nyata yang bertentangan, tiada halangan untuk YDPA memulakan sesi baru tanpa terlebih dahulu menangguh sesi sebelumnya (lihat perenggan 20–21).

(4) (oleh **Zainun Ali HMR, menentang**) Suatu penangguhan, sebagaimana dalam kes mesyuarat kelima itu, tidak mempunyai kesan yang sama ke atas prosiding Parlimen seperti mana satu prorogasi. Bahkan, ia suatu cadangan yang tidak boleh dikekalkan bahawa satu prorogasi boleh disimpulkan secara, tersirat atau tersurat (lihat perenggan 91–92).

(5) (oleh **Zainun Ali HMR, menentang**) Istilah 'dua mesyuarat berturut-turut' dalam perkara 51 patut diberikan maksudnya yang nyata dan biasa tidak lebih dan tidak kurang, iaitu dua mesyuarat berturut-turut, secara berturut tanpa gangguan dalam satu atau lebih sesi itu sebagaimana berlaku dalam rayuan ini, selagi mesyuarat-mesyuarat itu berturut-turut dan hal Dewan Undangan itu berterusan seperti biasa, oleh kerana ia tidak ditangguh. Bahasa jelas, nyata dan tak taksa dalam perkara 51 memerlukan pentafsiran secara harfiah (lihat perenggan 108).]

Notes

For cases on certiorari and mandamus, see 1(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 669–672.

For cases on rules of construction, see 11 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1971-1992.

Cases referred to

Attorney-General of the Commonwealth; ex rel McKinlay v The Commonwealth (1975) 135 CLR 1, HC (refd)

Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697, SC (refd)

London and Northern Bank, In re [1901] Ch 728, Ch D (refd)

Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin [2009] 4 MLJ 484; [2009] 3 CLJ 513, FC (refd)

Merdeka University Berhad v Government of Malaysia [1981] 2 MLJ 356 (folld)

Wan Khairani bte Wan Mahmood v Ismail bin Mohamad & Anor [2007] 4 MLJ 409, CA (refd)

Legislation referred to

Federal Constitution art 132(1)

Laws of the Constitution of Kedah arts 2, 2(1), 39(1), 51, 53(1), (2)

Appeal from: Civil Appeal No W-02–2654 of 2009 (Court of Appeal, Putrajaya)

Sulaiman Abdullah (Edmund Bon Tai Soon, Zulqurnain bin Lukman and Chan Yen Hui with him) (Chooi & Co) for the appellant.
Mohd Hafarizam bin Harun (Abu Bakar bin Isa Ramat and Nor Emelia Mohd Iszeham with him) (Hafarizam Wan & Aishah Mubarak) for the first respondent.
Amarjet Singh a/l Serjit Singh (Senior Federal Council, Attorney General Chamber) for the second respondent.
Anas Ahmad Zakie (watching brief for the Government of the State of Kedah).

Zulkefli CJ (Malaya) (delivering majority judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the Court of Appeal that reversed the decision of the High Court which had allowed the application for judicial review by the appellant against the respondents.

[2] Before the High Court, the appellant, the Speaker of the Kedah State Legislative Assembly was the applicant. The first respondent was the State Assemblyman for the Kota Siputeh State Constituency of Kedah and the second respondent was the Election Commission of Malaysia ('EC'). I shall refer to the parties as they were before the High Court.

[3] The applicant in his application for judicial review before the High Court is seeking the following orders against the first respondent:

(a) a writ of *quo warranto* to ask the first respondent to show cause and give confirmation how and under what basis/or authority that the first respondent is still the State Assemblyman for Kota Siputeh;

(b) a declaration that the first respondent is no longer the Kota Siputeh Assemblyman;

(c) a declaration that the Legislative Assembly of the State of Kedah for the constituency of Kota Siputeh (N3) is vacant; and

(d) a mandatory injunction preventing the first respondent and/or his agents from carrying out the responsibilities, function and duties as Kota Siputeh Assemblyman.

Against the second respondent the applicant is seeking the following reliefs:

(a) an order of certiorari to quash the second respondent's decision and/or

action as per its letter dated 1 September 2009 that:

(i) the Kota Siputeh State Seat is not vacant;

(ii) the first respondent is still the Kota Siputeh Assemblyman; and

(iii) no By-Election would be held by virtue of (i) and (ii) above.

(b) An order of mandamus to compel the second respondent to issue a writ of election and to hold a by-election to the Kota Siputeh State Seat.

[4] The High Court allowed the applicant's application. The High Court in its decision made the following orders as against the second respondent:

(a) an order of certiorari quashing the decision of the EC which had held that there was no casual vacancy for the Kota Siputeh State Seat; and

(b) an order of mandamus compelling the EC to issue a writ of election and hold a by-election for the said seat.

As against the first respondent the High Court granted an order-in-terms of the prayers sought for in the application except for a writ of qua warranto for the reason that the first respondent is not a person who holds office in the public service as set out under art 132(1) of the Federal Constitution.

LEAVE TO APPEAL

[5] Leave to appeal against the decision of the Court of Appeal was granted by this court for the determination of the following question:

> Whether on the true interpretation of art 51 of the Laws of the Constitution of Kedah, the absenteeism requirement, in order to render a seat vacant (ie 'two consecutive meetings'), refers to two consecutive meetings in one 'session' or to two consecutive meetings simpliciter.

BACKGROUND FACTS

[6] The relevant facts of the case as set out by the High Court are reproduced as follows:

(a) the Legislative Assembly of the State of Kedah ('Kedah Legislative Assembly') was dissolved on 13 February 2008 which led to the 12th General Election of the Kedah Legislative Assembly on 8 March 2008 ('12th General Election');

(b) after the 12th General Election, political parties under the Pakatan Rakyat coalition succeeded in obtaining the majority of the 36 seats which were contested during the said 12th General Election and consequently formed the current Kedah State Government;

(c) His Royal Highness the Sultan of Kedah ('HRH') thereafter summoned the meeting of the Kedah Legislative Assembly on 5 May 2008 at 9am. This is the first meeting (of the first session) of the 12th Kedah Legislative Assembly;

(d) subsequently, HRH summoned the Kedah Legislative Assembly for another meeting on 20 May 2008 at 9am. This is the second meeting (of the first session) of the 12th Kedah Legislative Assembly;

(e) the second meeting (of the first session) was subsequently adjourned *sine die*;

(f) another meeting was summoned by HRH on 25 August 2008 at 9am. This is the third meeting (of the first session);

(g) the third meeting (of the first session) was subsequently adjourned *sine die*;

(h) the Kedah Legislative Assembly was summoned for a fourth meeting (of the first session) on 18 November 2008 at 9am by HRH;

(i) the fourth meeting (of the first session) was subsequently adjourned *sine die*;

(j) the fifth meeting (of the first session) was held on 19 April 2009 at 9am. The first respondent was absent from the said meeting without leave of the applicant;

(k) the fifth meeting (of the first session) was subsequently adjourned *sine die*;

(l) HRH had summoned for another meeting on 9 August 2009 at 9am as the date and time for the first meeting (of the second session) of the Kedah Legislative Assembly. The first respondent was also absent from this meeting without leave of the applicant;

(m) subsequently, the applicant was informed by one Encik Zaidi bin Ahmad ('Zaidi') who is the 'Pembantu Tadbir (Kesetiausahaan)' of the Kedah Legislative Assembly office that the latter had contacted by telephone the first respondent on 12 August 2009 (approximately around 3pm) to inquire into the first respondent's absence from the Kedah Legislative Assembly for two consecutive meetings without leave of the applicant;

(n) after the said telephone conversation and at approximately 5pm, the first respondent faxed a letter dated 10 August 2009 together with a medical certificate dated 9 August 2009 to the State Legislative Assembly's Office and State Executive Meeting Council (Pejabat Dewan Undangan Negeri dan Majlis Mesyuarat Kerajaan Negeri Kedah);

(o) on 16 August 2009 the first respondent met the applicant in the latter's

office and the first respondent submitted his original letter dated 10 August 2009 and the medical certificate dated 9 August 2009;

(p) the applicant did not accept the first respondent's medical certificate and his reasons for being absent on 9 August 2009 for the following reasons:

(i) if the first respondent is unable to attend any meeting the said member must obtain leave from the applicant as Speaker of the Kedah Legislative Assembly. Once leave is granted the applicant will inform the Kedah Legislative Assembly of his absence for further action;

(ii) the first respondent did not contact or make any attempt to contact the applicant or the Secretary of the Kedah Legislative Assembly on 9 August 2009 or anytime immediately thereafter about his absence until he was contacted by Encik Zaidi on 12 August 2009;

(iii) if the first respondent had indeed contacted the Opposition Leader of the Kedah Legislative Assembly, YB Dato' Seri Diraja Mahdzir bin Khalid ('Opposition Leader') on 9 August 2009 to inform the latter about his absence, it is perplexing that the first respondent would not have informed the applicant about his absence on 9 August 2009;

(iv) the letter dated 10 August 2009 and the medical certificate dated 9 August 2009 are back-dated documents and it is an afterthought; and

(v) the applicant has reason to believe that on 10 August 2009, the first respondent had organised and attended a programme at Kampung Kolam Tok Arang making contributions to the victims of a natural disaster at the said *kampung*. The programme was reported in a local newspaper called *Sinar Harian* (Kubang Pasu);

(q) pursuant thereto the applicant wrote a letter dated 17 August 2009 to the Election Office of the State of Kedah, informing them that there is a vacancy in the Kota Siputeh State Seat;

(r) the second respondent's reply on 7 September 2009 adverted to above, resulted in the present application for judicial review by the applicant. The second respondent's reply can be summarised as follows:

(i) that the first respondent is still the Kota Siputeh Assemblyman and that there is no vacancy in the said state seat;

(ii) the meetings which were not attended by the first respondent were not two consecutive meetings within the meaning of art 51 of the Laws of the Constitution of Kedah ('the Kedah Constitution'). The two consecutive absences must occur within one 'penggal persidangan' (within one session). In the present case, the two

consecutive meetings which were not attended by the first respondent are two meetings in different sessions;

(iii) the second respondent accepted the medical certificate submitted by the first respondent as being the explanation for his absence at the 9 August 2009 meeting. The second respondent further held that the failure on the part of the first respondent to submit his medical certificate earlier or on 9 August 2009 did not render the medical certificate void; and

(iv) before art 51 of the Kedah Constitution can be invoked, the matter has to be referred to the Rights and Privileges Committee of the 12th Legislative Assembly.

FINDINGS OF THE HIGH COURT

[7] Before the High Court the principal issue for determination revolves around whether the Kota Siputeh State Seat had by operation of law under art 51 of the Kedah Constitution become vacant as the first respondent was absent for two consecutive meetings of the legislative assembly without the leave of the speaker. The learned judge of the High Court held that the applicant as the speaker was correct in his interpretation of art 51 of the Kedah Constitution and that the first respondent's seat had become vacant by the operation of law. The second respondent was therefore wrong to have decided that the seat was not vacant and the High Court quashed the second respondent's decision.

FINDINGS OF THE COURT OF APPEAL

[8] The Court of Appeal in allowing the appeal of the respondents found that the meeting on 19 April 2009, being the fifth meeting of the first session and the meeting on 9 August 2009, being the first meeting of the second session, were not 'two consecutive meetings' as envisaged by art 51 of the Kedah Constitution. The first respondent's seat was therefore held not to be vacant.

DECISION

[9] Learned counsel for the applicant in his submission before us amongst others contended that the words of art 51 of the Kedah Constitution are clear, plain and unambiguous, and therefore this court ought to give effect to its ordinary meaning irrespective of its consequences. If the Legislature had intended that the absenteeism must be in the same session, it would have had inserted the words 'in a session' after the phrase 'two consecutive meetings'. It is not open to this court to import the phrase 'two consecutive meetings in a

session' when none was intended at the outset by the Legislature. No words should be added to art 51 of the Kedah Constitution when and where they were not intended.

[10] For the applicant it was also submitted following the interpretation provision of art 2 of the Kedah Constitution, a 'session' will continue until it is dissolved or prorogued. In the present case there was no prorogation or dissolution of the legislative assembly after the meeting held on 19 April 2009, which is the fifth meeting of the first session. The proclamation by HRH issued on 1 July 2009 was for the first meeting (of the second session) to be held on 9 August 2009 and not to prorogue or dissolve the legislative assembly.

[11] Learned counsel for the applicant further submitted that in any event, it is irrelevant whether both the meetings were in the same session or otherwise because the first respondent missed both of the said meetings which were held consecutively.

[12] I am of the view that answering the question posed before this court calls for the correct interpretation of art 51 of the Kedah Constitution which is to be read together with the interpretation provision of art 2(1) of the said Constitution in relation to the words 'meeting' and 'session'. The effect of the proclamation by HRH in summoning the second session of the legislative assembly has also to be considered in determining the question posed. Article 51 of the Kedah Constitution provides as follows:

> If any member of the Legislative Assembly is absent from the Assembly without leave of the Speaker for two consecutive meetings his seat shall become vacant.

[13] The applicant in support of his contention that the plain and ordinary meaning is to be accorded to the phrase 'two consecutive meetings' referred to us the dictionary meaning for the word 'consecutive' from the *Shorter Oxford English Dictionary*, namely, 'Following continuously; following one's or its predecessor in uninterrupted sequence'. The phrase in art 51 of the Kedah Constitution was then interpreted to mean one meeting following the earlier meeting in an uninterrupted succession. With respect I do not agree with such a construction. This interpretation is flawed because it fails to take into account the meaning expressly assigned to the word 'meeting' in art 2(1) of the Kedah Constitution. I am of the view when the meaning of 'meeting' as assigned by the said article is taken into consideration, consecutive 'meeting' must be construed to mean one meeting following an earlier meeting in an uninterrupted succession in the same session.

[14] Article 2(1) of the Kedah Constitution requires that the words 'meeting' and 'session' have the meaning respectively assigned to them thereunder unless

the context otherwise requires. In the present case it is my view that in the interpretation of art 51 of the Kedah Constitution the context does not require that 'meeting' and 'session' be given different meanings than that assigned under art 2(1) which reads as follows:

> In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say - '*meeting*' means any sitting or sittings of the Legislative Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned sine die or at the conclusion of a session without adjournment.
>
> '*session*' means the sittings of the Legislative Assembly commencing when the Assembly first meets after being constituted or after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or is dissolved without having been prorogued.

[15] In my judgment from the meaning assigned to the word 'meeting', it is clear that meetings are sittings of the legislative assembly that are held in a session. The meaning of session shows that each session has a time frame from when the assembly first meets after being constituted or after its prorogation or dissolution until it is terminated. Each session has its own set of meetings in an uninterrupted succession.

[16] I am of the view that when the meaning of 'meeting' as defined in art 2(1) is applied to art 51 of the Kedah Constitution, it is abundantly clear that the last sitting in one session would be the assembly's last meeting of that session, and the first sitting of the next session is the assembly's first meeting of the new session. Thus the coming into existence of a new session means that the last meeting of the preceding session and the first meeting in the new session no longer follow continuously. Therefore the last meeting of the preceding session and the first meeting of the new session is not accordingly consecutive.

[17] I shall now deal on the effect of HRH summoning the second session of the legislative assembly. For the applicant it was argued that since HRH had not prorogued the legislative assembly the first session continued and the meeting on the 9 August 2009 was in actual fact the sixth meeting of the first session. With respect this interpretation in my view is contrary to the express and clear words of the proclamation issued by HRH, *gazetted* as KPU 10, where HRH had summoned the first meeting of the second session on the 9 August 2009.

[18] It is my finding that the EC had rightly interpreted and give effect to the proclamation in arriving at its decision. Learned counsel for the second respondent was right in submitting that the EC was not at liberty to question the proclamation or question its validity. The proclamation by HRH has taken

effect and had not at all material times been revoked. All documentation, even that of the Speaker himself, shows that the meeting on 9 August 2009 was the first meeting of the second session. This can be seen in the letter dated 17 August 2009 where the Speaker informed the first respondent of the seat becoming vacant due to the first respondent's absence. In this letter he had referred to the meeting on the 9 August 2009 as the first meeting of the second session. It is also noted in the letter dated 12 October 2009 the secretary of the legislative assembly informed all parties concerned that the meeting to be held on the 17 November 2009 was the second meeting of the second session.

[19] Article 53(1) of the Kedah Constitution empowers HRH to summon the legislative assembly, and that HRH can exercise this power from 'time to time'. Article 53(1) reads as follows:

> The Ruler shall from time to time summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

While art 53(2) states that:

> The Ruler may prorogue or dissolve the Legislative Assembly.

[20] I am of the view from the clear wordings of art 53(1) of the Kedah Constitution, no one except HRH can summon the legislative assembly to meet. This power is of course exercised on the advice of the executive council. For the Kedah State Legislative Assembly, it is noted that the practice is to summon the first meeting of a new session without the preceding session being expressly prorogued. I also find that there is no provision that requires the preceding session to be prorogued before a new session can come into existence. On this point useful reference can be made to *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (23rd Ed), 2004 wherein at p 274 the author explains the meaning and effect of prorogation as follows:

> The prorogation of parliament is a prerogative act of the Crown. Just as Parliament can commence its deliberations only at the time appointed by the Queen, so it cannot continue them any longer than she pleases. The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again, and to end the sittings of Parliament.

[21] I am of the view that by virtue of art 53(1)–(2) of the Kedah Constitution, HRH has both the power to command the legislative assembly to commence its business and then to cease its business at any time by way of a prorogation. In such circumstances, in the absence of express provision to the contrary, there is no impediment for HRH to commence a new session without

first having the preceding session prorogued.

CONCLUSION

[22] For the abovestated reasons I would answer the question posed in this appeal by stating that in order to render a seat vacant the words 'two consecutive meetings' refers to two consecutive meetings in one session. My learned brothers Hashim Yusoff, FCJ, Ahmad Maarop, FCJ and my learned sister Zaleha bt Zahari, FCJ have read this judgment in draft and have expressed their agreement with it. In the result the decision of the Court of Appeal is affirmed and the appeal is dismissed. We make no order as to costs of the appeal before this court.

Zainun Ali FCJ (dissenting):

[23] On 17 August 2009, the routine of the Kedah State Legislative Assembly ('the assembly') took a turn when the appellant contended that due to the first respondent's absence on two consecutive meetings of the assembly, the latter's seat had therefore fallen vacant by operation of law.

[24] It is immediately clear that this is a novel point and one in which both sides of the political divide have to come to grips with. The appellant's stand however was roundly rebutted by the second respondent, resulting in an application by the appellant in the High Court for certain specific reliefs. The learned High Court judge ruled in the appellant's favour. However the decision was reversed in the Court of Appeal. Leave was granted by the Federal Court, hence this appeal.

[25] Since the judgment of Zulkefli Makinudin CJM (FCJ) have carefully narrated the background facts, I shall dispense with having to repeat them here, save to highlight some points of importance as and when the need arises.

[26] When leave to appeal was granted by the Federal Court against the decision of the Court of Appeal, the question posed to it for determination was:

> Whether on the true interpretation of art 51 of the Laws of the Constitution of Kedah, the absenteeism requirement, in order to render a seat vacant (ie 'two consecutive meetings) refer to two consecutive meetings in one 'session' or to two consecutive meetings simpliciter'.

IN THE HIGH COURT

[27] Based on the primary issue for determination ie whether the Kota

Siputeh State Seat had, by operation of law under art 51 of the Kedah Constitution become vacant due to the absence of the first respondent for two consecutive meetings without leave of the Speaker, the learned High Court judge found that:

(a) the Speaker had correctly interpreted art 51 of the Kedah Constitution and that the first respondent's seat had become vacant by operation of law; and that

(b) the second respondent was therefore wrong to have decided that the seat was not vacant.

[28] The learned High Court judge also quashed the second respondent's decision.

IN THE COURT OF APPEAL

[29] The Court of Appeal however allowed the first and second respondents' appeal. It found that the meeting held on 19 April 2009, being the fifth meeting of the first session and the meeting on 9 August 2009 being the first meeting of the second session were not 'two consecutive meetings' as countenanced by art 51 of the Kedah Constitution. The first respondent therefore remains as the State Assemblyman for Kota Siputeh as his seat was held not vacant.

[30] For ease of reference. I shall adopt in full the relevant chronology of events as were stated by the learned High Court judge as follows.

[31] The Legislative Assembly of the State of Kedah ('Kedah Legislative Assembly') was dissolved on 13 February 2008 which led to the 12th General Election of the Kedah Legislative Assembly on 8 March 2008 ('12th General Election').

[32] After the 12th General Election, political under the Pakatan Rakyat coalition succeeded in obtaining the majority of the 36 seats which were contested during the said 12th General Election and consequently formed the current Kedah State Government.

[33] His Royal Highness the Sultan of Kedah ('HRH') thereafter summoned the meeting of the Kedah Legislative Assembly on 5 May 2008 at 9am. This is the first meeting (of the first session) of the 12th Kedah Legislative Assembly.

[Exhibit AII-5 in the affidavit in support of the

applicant affirmed on 28 September 2009, encl (3)].

[34] Subsequently, HRH summoned the Kedah Legislative Assembly for another meeting on 20 May 2008 at 9am. This is the second meeting (of the first session) of the 12th Kedah Legislative Assembly.

[Exhibit AII-6 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[35] The second meeting (of the first session) was subsequently adjourned sine die.

[Exhibit AII-7 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[36] Another meeting was summoned by HRH on 25 August 2008 at 9am. This is the third meeting (of the first session).

[Exhibit AII-8 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[37] The third meeting (of the first session) was subsequently adjourned sine die.

[Exhibit AII-9 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[38] The Kedah Legislative Assembly was summoned for a fourth meeting (of the first session) on 18 November 2008 at 9am by HRH.

[Exhibit AII-10 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[39] The fourth meeting (of the first session) was subsequently adjourned sine die.

[Exhibit AII-13 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[40] The fifth meeting (of the first session) was held on 19 April 2009 at 9am.

[Exhibit AII-14 in the affidavit in support of the

applicant affirmed on 28 September 2009, encl (3)].

The first respondent was absent from the said meeting without leave of the appellant. This is undisputed fact.

[41] The fifth meeting (of the first session) was subsequently adjourned sine die.

[Exhibit AII-11–15 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[42] HRH had summoned for another meeting on 9 August 2009 at 9am as the date and time for the first meeting (of the second session) of the Kedah Legislative Assembly.

[Exhibit AII-11–16 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

The first respondent was also absent from this meeting without leave of the appellant.

[43] Subsequently, the appellant was informed by one En Zaidi bin Ahmad ('Zaidi') who is the 'Pembantu Tadbir (Kesetiausahaan)' of the Kedah Legislative Assembly Office that the latter had contacted the first respondent on 12 August 2009 (approximately around 3pm) to inquire into the first respondent's absence from the Kedah Legislative Assembly for two consecutive meetings without leave of the appellant.

[44] After the said telephone conversation and at approximately 5pm, the first respondent faxed a letter dated 10 August 2009 together with a medical certificate dated 9 August 2009 to the State Legislative Assembly's Office and State Executive Meeting Council ('Pejabat Dewan Undangan Negeri dan Majlis Mesyuarat Kerajaan Negeri Kedah').

[45] On 16 August 2009, the first respondent met the appellant in the latter's office and the first respondent submitted his original letter dated 10 August 2009 and the medical certificate dated 9 August 2009.

[46] The appellant did not accept the first respondent's medical certificate for being absent on 9 August 2009 for the following reasons:

(a) if the first respondent is unable to attend any meeting the said member must obtain leave from the appellant as Speaker of the Kedah Legislative Assembly. Once leave is granted the appellant will inform the Kedah Legislative Assembly of his absence for further action;

(b) the first respondent did not contact or make any attempt to contact the appellant or the Secretary of the Kedah Legislative Assembly on 9 August 2009 or anytime immediately thereafter about his absence until he was contacted by En Zaidi on 12 August 2009;

(c) if the first respondent had indeed contacted the Opposition Leader of the Kedah Legislative Assembly, YB Dato' Seri Diraja Mahdzir bin Khalid ('Opposition Leader') on 9 August 2009 to inform the latter about his absence, it is perplexing that the first respondent would have informed the appellant about his absence on 9 August 2009;

(d) the letter dated 10 August 2009 and the medical certificate dated 9 August 2009 are back-dated documents and it is an afterthought; and

(e) the appellant has reason to believe that on 10 August 2009, the first respondent had organised and attended a programme at Kampung Kolam Tok Arang making contributions to the victims of a natural disaster at the said kampong. The programme was reported in a local newspaper called *Sinar Harian* (Kubang Pasu).

[47] Pursuant thereto the appellant wrote a letter dated 17 August 2009 to the Election Office of the State of Kedah, informing them that there is a vacancy in the Kota Siputeh State Seat.

[48] The second respondent's reply on 7 September 2009 adverted to above, resulted in the present application. The second respondent's reply can be summarised as follows:

(a) that the first respondent is still the Kota Siputeh Assemblyman and that the there is no vacancy in the said State Seat;

(b) the meetings which were not attended by the first respondent were *no*t two consecutive meetings within the meaning of art 51 of the Kedah Constitution. The two consecutive absences must occur within one 'penggal persidangan' (within one session). In the present case, the two consecutive meetings which were not attended by the first respondent are *two meetings in different sessions*; (Emphasis added.);

(c) the second respondent accepted the medical certificate submitted by the first respondent as being the explanation for his absence at the 9 August 2009 meeting. The second respondent further held that the failure on the part of the first respondent to submit his medical certificate earlier or on 9 August 2009 did not render the medical certificate void; and

(d) that before art 51 of the Kedah Constitution can be invoked, the matter has to be referred to the Rights and Privileges Committee of the 12th Legislative Assembly.

[Exhibits AII-22 and All-23 in the affidavit in support of the applicant affirmed on 28 September 2009, encl (3)].

[49] In view of the above, the question before us can be determined by a careful scrutiny of the relevant provision in the Kedah State Constitution and applying appropriate canons of construction in interpreting the same.

[50] Thus one can begin by asking how would art 51 of the Kedah State Constitution ('art 51') be interpreted?

Article 51 states as follows:

> If any member of the Legislative Assembly is *absent* from the Assembly *without leave* of the speaker *for 2 consecutive meetings*, his seat shall become *vacant*. (Emphasis added.)

[51] From a reading of the rival contention of both parties, it is clear that the construction to be assigned to the phrase two 'consecutive meetings' lies at the heart of this appeal.

[52] Counsel for the appellant proposed three pre-conditions which he claims are to be satisfied before a seat can be declared to be vacant pursuant to art 51. The said three pre-conditions are as listed below:

(a) a member of the legislative assembly must be absent from the assembly;

(b) the said member must be absent for two consecutive meetings; and

(c) that his absence from the assembly is without leave of the Speaker.

THE FIRST PRE-CONDITION (ABSENT FROM THE ASSEMBLY)

[53] Since it is not disputed by both the first and second respondent that the first respondent was absent from the state assembly meetings on 19 April 2009 and 9 August 2009, no issue arises under this head. But what is in contention however is whether these two absences constitute being absent from the assembly for *two consecutive meetings.* (Emphasis added).

The act of absenteeism here is by a member of the legislative assembly. The phrase 'absent from the assembly' in art 51 means the state of being away from the assembly for whatever reason. See:

(a) *Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin* [2009] 4 MLJ 484; [2009] 3 CLJ 513;

(b) *Wan Khairani bte Wan Mahmood v Ismail bin Mohamad & Anor* [2007] 4 MLJ 409;

(c) *In re London and Northern Bank* [1901] 1 Ch 728

SECOND PRE-CONDITION (ABSENT FOR TWO CONSECUTIVE MEETINGS)

[54] The first pre-condition thus flows on to the second, which is whether the phrase 'two consecutive meetings' in art 51 refers to *two consecutive meetings in a session*. It must be said here and now that the phrase 'in a session' was inferred by the respondents.

[55] The appellant however submitted that the words and phrases in art 51 are plain and unambiguous. Nowhere in art 51 is it explicit or implicit that the 'absenteeism' refers to two consecutive meetings *in a session.* (Emphasis added)

[56] In other words the respondents contended that the said art 51 refers to two consecutive meetings in the *same session*. The second respondent went on to suggest that since the absences (ie on 19 April 2009 and 9 August 2009) occurred in *two* different sessions, art 51 therefore has not been breached by the first respondent. (Emphasis added)

[57] Is this interpretation correct?

[58] Firstly, it must be said that the Kedah State Constitution is silent as to the meaning of the phrase 'consecutive meetings' under art 51. The second respondent attempted to define it by making reference to the other provisions in the Kedah State Constitution, specifically with reference to the definition of the words 'meeting' and 'session' in art 2, read with the definition of the term 'sitting' in O 96 of the Standing Rules and Orders of the Legislative Assembly.

[59] In view of the parties' opposing contention, a perusal of the said terms is incumbent. Firstly, the term '*meeting*' is defined in art 2 of the Kedah State Constitution to mean:

> … any sitting or sitting of the Legislative Assembly commencing when the Assembly first meets after being *summoned* at any time and terminating when the Assembly is *adjourned sine die* or at the conclusion of a session without adjournment.

[60] '*Session*' in art 2 of the Kedah State Constitution means:

the sittings of the Legislative Assembly commencing when the Assembly first meets *after being constituted or after its prorogation or dissolution at any time*, and terminating when the Assembly is prorogued or is *dissolved* without having been prorogued. (Emphasis added.)

[61] Since the term '*sitting*' is not defined in the Kedah State Constitution, reference is made to the definition of 'sitting' in Standing Order 96 of the Standing Rules and Orders of Legislative Assembly of the state which reads as follows:

… a period during which the Assembly sitting *continuously* (apart from any suspension) without adjournment, and includes any period during when the Assembly is in committee.

[62] The term 'prorogation' is also in contention and thus its definition is also necessary here. — Firstly, the term 'prorogation' is not defined in the Kedah Constitution. Reference is therefore to be made to *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd version, Chapter 13. According to Erskine May, prorogation essentially refers to a situation where the Ruler decides to *discontinue the session* of a legislative body *without dissolving it*.

[63] According to *Butterworth's Australian Legal Dictionary* 'Prorogation' is the means by which a session of Parliament is terminated. The main effects of prorogation are to place the Parliament into recess; to cause unfinished business before the houses to lapse; and to prevent the houses of Parliament from meeting.

[64] From a reading of the Kedah State Constitution, the decision to prorogue is the prerogative of HRH the Sultan of Kedah. The discretion is his alone as clearly manifested in art 53(2) which reads:

The Ruler may prorogue or dissolve the Legislative Assembly.

[65] It is my view that when the Ruler exercises his discretion under this article, he does not act on a whim or in a vacuum. He *acts on the advice of the State Executive Council by virtue of art 39(1) of the Kedah State Constitution.* (Emphasis added)

[66] In the light of the above, the act of prorogation is therefore a deliberative act and thus with respect, the suggestion that the Ruler is not impeded in commencing a new session without first having the preceding session prorogued is an artless interpretation to the exercise of the Ruler's power under the Kedah State Constitution.

[67] In view of the dynamics involved as alluded to above, can it be said with confidence that the phrase as implied by the respondent (ie two consecutive meetings in the *same session*), be read into art 51?

[68] If one were to entertain the above contention made by the second respondent, then the riposte to the above would involve a determination as to whether there was just one session or more (of the assembly).

[69] This would naturally leads to the question of whether after the fifth meeting of the first session, there was a prorogation or dissolution within the meaning of the Kedah State Constitution, which would in clear terms, indicate that a new and fresh session had begun.

[70] In this context, a scrutiny of each and every call or summon made by the Ruler for each of the meetings beginning with the first one which was on 5 May 2008 (described as the first meeting of the session) is called for.

[71] The first meeting of the so-called first session was summoned, pursuant to the proclamation issued by the Ruler to that effect.

[72] After the first meeting of the session on 5 May 2008 several subsequent meetings were held thereafter at sporadic intervals. *The meeting would begin with a summons made by the Ruler and at the end of the meeting, it is adjourned sine die*. This is equally true for all of the said legislative assembly meetings from the first right up to the fifth meeting respectively. (Emphasis added)

[73] Given the above element of predictability as regards the procedure involved in the calling for and ending of the legislative assembly meeting, it is accepted practice and one in which it is customary for the Ruler to operate as such in exercising his function under the Kedah State Constitution.

[74] To reiterate, it is an accepted 'tradition' that all of the Kedah State Assembly Meetings would begin with the Ruler's summons and the said meeting would be adjourned sine die unless of course it is dissolved or prorogued by the Ruler.

[75] As regards prorogation however, it is notable that the procedure or practice of issuing a proclamation to dissolve or prorogue the legislative assembly is not provided for in the Kedah State Constitution but is based on parliamentary practice in the United Kingdom in which 'Parliament is usually dissolved by Proclamation'.

[76] In view of the 'breaks' in between the meetings where it was 'adjourned

sine die', it is timely to now examine the meaning of the said phrase since its effect will have a bearing on the legal status of the meeting following the preceding one.

[77] The phrase 'adjourned sine die', according to *Black's Law Dictionary* (9th Ed), p 47 (in the context of the assembly meeting) means to end a deliberative assembly's session without setting a time to reconvene.

[78] Thus when the assembly resumed its sitting on the next date, (which can be seen in this case to be approximately about 2–3 months apart), the period between the two dates is termed an 'adjournment'. In other words, in the context of this appeal, the legislative assembly was merely at an adjournment stage in between each meeting. This would mean that the purported first meeting of the second session on 9 August 2009 is in actual fact and in law, the *sixth meeting* of the *first session*.

[79] But the first and second respondent thought differently. The respondents took the position that after the fifth meeting on 19 April 2009, the next meeting which was on 9 August 2009 was the first meeting in a new session. In other words the respondents impliedly asserted that the 5th meeting (of the first session) was not adjourned sine die but was dissolved, resulting in the 9 August 2009 meeting being the first meeting of a new session, which is in their contemplation, the second session.

[80] The reason for the respondent's argument is obvious. It is to reconcile its construction of art 51 that the two absences by the first respondent were not in one session but were in two different sessions, which in their view would not attract a breach of art 51.

[81] This is inferred from their submission where they stated that:

> It is submitted that Article 51 of UTKK (Undang-Undang Tubuh Kerjaaan Kedah) give rise to the following issues:-
>
> Whether the fifth meeting of the First Session on 19.4.2009 and the first meeting of the Second Session on 9.8.2009 fall within the constitutional meaning of 'consecutive meetings' under Article 51 UTKK.

[82] The above contention with respect, speaks of a murky comprehension of the issue at hand. To begin with, what exactly did the second respondent mean when it speaks of the 'constitutional meaning of the phrase consecutive meetings?'.

[83] Even if the second respondent conceded that the phrase 'consecutive meetings' is not defined in the Kedah State Constitution, the second

respondent's attempt at defining it by making reference to the other provisions in the Kedah State Constitution as had been stated earlier, in no way help their cause. This is because the second respondent have failed to accord the clear words in art 51 their plain and ordinary meaning, and had instead, rendered them superfluous.

[84] Consider this. According to the second respondent the assembly had been prorogued when the Ruler issued the proclamation in which the meeting on 9 August 2009 is described as the first meeting of the second session and that the effect of the proclamation is to terminate the first session of the assembly and the second session therefore commences.

[85] The second respondent went on to submit that based on the definitions of 'meetings', 'sessions' and 'sittings' in the Kedah State Constitution, the first respondent's first absence *on 19 April 2009* was in the *fifth meeting of the first session* of the legislative assembly, whereas the first respondent's second absence on *9 August 2009* was in a different session since it was in the *first meeting* of the *second session*.

[86] The second respondent thus concluded that the first meeting of the second session on 9 August 2009 cannot be considered as a 'consecutive meeting' to the fifth meeting (on 19 April 2009) of the first session based on the following grounds:

(a) each session of the assembly has its own meetings;

(b) a session of the assembly terminates upon it being prorogued;

(c) the *first session* of the assembly was *prorogued* by HRH as a result of the *proclamation* of the second session by HRH; and

(d) the second session begins with a fresh meeting as each session has its own meetings. (Emphasis added)

[87] Given the above, an important question emerges. Was there a prorogation of the first session of the assembly? And as an adjunct, if there was such prorogation, is the meeting on the 9 August 2008 correctly described in law, as the first meeting of the second session?

[88] In my view, it is clear from the definition of the word 'session' in art 2 that a 'session' commences when the assembly first meets *after* being *constituted* or *after its prorogation* or *dissolution at anytime.* (Emphasis added)

[89] It is commonplace that during the course of a session the assembly may adjourn itself (which in this case it did) on its own motion to such date as it pleases. Although sessions are of indeterminate length, in the present appeal the

meetings in the session were adjourned sine die and when the sittings were resumed, the assembly would continue to be in session, unless it is dissolved or prorogued. *There was no such proclamation issued by the Ruler to prorogue the assembly at the end of the fifth meeting of the first session on 9 April 2009.*

[90] It was contended by Dato' Kamaluddin Said, senior federal counsel ('SFC') acting for the second respondent, that while he conceded that there was no proclamation to expressly prorogue the legislative assembly, he argued that the assembly is *deemed* to be prorogued when the Ruler issued the said proclamation calling for the meeting on 9 August 2008.

[91] With respect, I disagree with the SFC's view above on two counts.

Firstly an adjournment (as was the case of the fifth meeting) does not have the same effect on Parliamentary proceedings as does a prorogation. As *Erskine May* pointedly stated:

> … Upon reassembling, each House proceeds to transact the business previously appointed, and all proceedings are resumed at the stage at which they were left before the adjournment.

Secondly, it is an unsustainable proposition that a prorogation can be inferred, implied or deemed, as suggested by the SFC.

[92] As clearly stated earlier, *the power to prorogue is the Ruler's discretionary power under art 53(2), acting on the advice of the State Executive Council, pursuant to art 39(1).* (Emphasis added)

[93] I can find no evidence of such advice under art 39(1). HRH does not act unilaterally in the exercise of his discretionary power under art 53(2).

[94] In the absence of any advice under art 39(1) and evidence that the Ruler has expressly exercised his power to prorogue under art 53(2), the meeting on the 9 August 2009 is in law, merely a continuation of the first session, making it its sixth meeting.

[95] At the risk of belabouring the point, the proclamation by the Ruler issued on 1 July 2009 for the meeting to be held on 9 August 2009 was the sixth meeting of the first session and was not a prorogation or dissolution of the legislative assembly. This contention is fortified if one were to carefully read the meaning of prorogation as expounded in *Erskine May's Treatise* and the clear provisions of art 53(2) read together with art 39(1) as set out above. In any case the proclamation for the 9 August 2009 meeting is similar in form and substance with previous proclamations summoning the first to the fifth meetings. Thus in what way has this particular proclamation for the meeting

on the 9 August 2009 assumed a different character altogether from the previous proclamations, to justify it being construed a prorogation? The second respondent has offered no explanation whatsoever as to how the said proclamation has now morphed into a different character to justify the 9 August 2009 meeting of the assembly being labeled or simply referred to as the first meeting of the second session. A simplistic approach as such could not have been envisaged nor intended.

[96] In my view, the term given to the 9 August 2009 as the 'first meeting of the 2nd session' is therefore a misnomer. At best the term could be utilised for purposes of administrative expedience and at worst, as an erroneous semantic.

[97] With respect, one would be nonplussed as to how such a construction as offered by the second respondent could be accepted, given the clear terms in the various provisions of the Kedah State Constitution. One must not lose sight of the fact that it is *customary* for the Ruler to issue a proclamation to summon *each* and *every meeting* of the legislative assembly commencing from the date it was first constituted on 5 May 2008 until the meeting on 19 April 2009 (before the 'impugned' meeting on 9 August 2009). Thus to *assume* that the issuance of a proclamation describing the 9 August 2008 meeting as the first meeting of the second session as being ipso facto evidence that the legislative assembly has been prorogued is a fallacy.

[98] In the circumstances I agree with the appellant that the meeting on the 9 August 2009 although described as the first meeting of the second session, is in law and in fact, the sixth meeting of the first session.

[99] The above vitiates the second respondent's argument that there were two sessions and that the first respondent's absences for two consecutive meetings were not in the same session.

[100] On this note, I agree with the appellant's contention that the phrase 'two consecutive meetings' must be given its plain and ordinary meaning.

[101] As is expressed in the *Shorter Oxford English Dictionary on Historical Principles* Vol 1, the word 'consecutive' is described as:

> Following continuously: Following each of its predecessor in uninterrupted succession.

[102] Based on the above, it is my view that the phrase 'two consecutive meetings' appearing in art 51 refer to one meeting following an earlier one in an uninterrupted succession.

[103] As had been clearly seen, the fifth meeting was adjourned sine die and its resumption on the 9 August 2009 was a *continuation* of its meeting in the same session. A

[104] I find that the second respondent's construction of art 51 that the 'absenteeism' relates to 'two consecutive meetings in a session' is unsupported by any authority. The second respondent relied on the authority of *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697 where the Federal Court quoted a passage from the judgment of the High Court in Australia in *Attorney-General of the Commonwealth; ex McKinlay v The Commonwealth* (1975) 135 CLR 1 which stated that: B C

> … the only true guide and the only course which can produce stability in constitutional law is to read the language of the Constitution itself, no doubt generously and not pedantically, but as a whole and to find its meaning by legal reasoning. D

[105] Whilst it is true that the above passage is undoubtedly an established canon of constitutional construction, it has no bearing on the second respondents' argument in this appeal, unless the second respondent was contending that one has to read the constitution as a whole, including making reference to the definitions of 'session', 'meeting' and 'sitting' in O 96, before one could interpret and construe the phrase 'two consecutive meetings'. In my view, this approach is unhelpful since the said phrase being undefined in the Kedah Constitution, is to be construed in its literal context. E F

[106] One other critical point is this — the second respondent *had not* contended that giving the phrase 'two consecutive meetings' its plain and ordinary meaning would lead to an absurdity or is otherwise inconsistent with the purpose and intention of the Kedah State Constitution. Thus for the second respondent to now give in to surplusage by imputing words 'in the same session' after the phrase 'two consecutive meeting' is to render the provision in art 51 feckless and incongruous. G H

[107] Reliance can be placed on the established principles of law in constitutional construction found in the oft-quoted case of *Merdeka University Berhad v Government of Malaysia* [1981] 2 MLJ 356 where Eusoffee Abdoolcader J (as he then was) observed that: I

> The constitution is not to be construed in any narrow or pedantic sense but this does not mean that the court is at liberty to stretch or pervert the language of the constitution in the interests of any legal or constitutional theory or even for the purpose of supplying omission or correcting error. (Emphasis added.)

[108] Thus applying the said legal principles to the question posed, I hold that the phrase 'two consecutive meetings' in art 51 should be given its plain and ordinary meaning nothing more and nothing less, ie two consecutive meetings, in uninterrupted succession' in one or more session as happened in this appeal, for as long as the meetings were in succession and the business of the assembly continues as usual, since it was *never* prorogued. Once again, in my view the clear, plain and unambiguous language of art 51 calls for a literal interpretation.

[109] Reverting to the question posed, it is my view is that the first respondent was definitely absent in two consecutive meetings in one uninterrupted session. Moreover it is obvious that the language of art 51 is unpretentious in its clarity in that it refers to the event of 'absenteeism' in two consecutive meetings without the leave of the Speaker.

[110] Of far more critical importance is whether the respondents are allowed a careless disregard for a proper constitutional construction of the clear provisions in the Kedah State Constitution, especially those found in arts 53(1)–(2) and 39(1).

[111] In my view in answering the question posed to us, there is no basis to depart from established canons of construction.

CONCLUSION

[112] For the above reasons, I would answer the question posed in this appeal by stating that to render a seat vacant the words, 'two consecutive meetings' refer to two consecutive meetings meaning one following the other in succession whether in the same (ie one) session or in two separate sessions or more. In my view it is completely irrelevant whether both the meetings were in the same session or otherwise because the first respondent absented himself on both meetings which were held consecutively.

[113] In the circumstances I would allow the appeal and restore the orders granted by the High Court.

Appeal dismissed and decision of the Court of Appeal affirmed.

Reported by Afiq Mohamad Noor